UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Chapter 11

Pierre Lionel Lespinasse,

, Case No. 16-10180-mew

Debtor. Judge: Michael E. Wiles

**OBJECTION TO DEBTOR'S**
**DISCLOSURE STATEMENT DATED AND FILED NOVEMBER 22, 2016**

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage Pass-Through Certificates, Series 2006-AR15, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc. ("Secured Creditor" herein) hereby files this objection (the "Objection") to Debtor's Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code (the "Disclosure Statement") and respectfully states as follows:

## PRELIMINARY STATEMENT

The Disclosure Statement should not be approved because Debtor's proposed plan annexed thereto is not confirmable as the Disclosure Statement itself does not contain "adequate information" required by 11 U.S.C. Section 1125(B).

## BACKGROUND

1. On January 27, 2016 (the "Petition Date"), Pierre Lionel Lespinasse (the "Debtor") filed a voluntary petition with this Court for relief under Chapter 11 of Title 11 of the United States Code.

2. Since that time the Debtor has remained in possession of his assets as a debtor-in- possession.

3. Secured Creditor is a secured creditor with respect to a cooperative apartment located at 52 East 78th Street, New York, NY (herein after "Real Property-New York").

4. Upon information and belief, the Debtor is in default in failing to pay any adequate protection payments since the Petition Date and the loan remains for due for May 2015, and each and every payment thereafter.

5. On or around November 22, 2016, Secured Creditor and the Debtor did agree to a "Stipulation and Order for Plan Treatment and Conditional Stay Relief on First Lien Secured by Real Property at 522 E 78th Street, #3C, New York, NY". Same has been submitted to this Court to be "So Ordered".

**DEBTOR'S DISCLOSURE STATEMENT**
**DOES NOT CONTAIN ADEQUATE INFORMATION**

6. One of the fundamental policies underlying the chapter 11 reorganization process is full disclosure by a debtor. *Momentum Mfg. Corp.* v. *Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994). Congress intended the disclosure statement to be the primary source of information upon which creditors and shareholders rely in making an informed judgment about a plan of reorganization. *Id.*

7. Under section 1125(b) of the Bankruptcy Code, a proposed disclosure statement may not be approved by a court unless it provides "adequate information" to holders of claims or interests. 11 U.S.C. § 1125(b). Section 1125(a)(1) defines "adequate information" as: "of a kind, and in sufficient detail, as far as is reasonably practicable ... that

would enable ... a hypothetical investor of the relevant class to make an informed judgment about the plan ..." 11 U.S.C. § 1125(a)(1); *Momentum Mfg. Corp.*, 25 F.3d at 1136.

8. The purpose of section 1125 is to assist the creditors in evaluating the plan on its face. *Colorado Mountain Express, Inc., v. Aspen Limousine Service, Inc. et al. (In re Aspen Limousine Svcs, Inc.),* 193 B.R. 325, 334 (D. Colo. 1996). The importance of full disclosure is "underlaid by the reliance placed upon the disclosure statement by the creditors and the court." *Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.),* 848 F.2d 414, 417 (3d Cir. 1988). Accordingly, if a disclosure statement lacks "adequate information" pursuant to § 1125(a)(l), so as to frustrate a hypothetical investor's informed judgment about the plan, it could later preclude the subsequent confirmation of such plan. *In re Crowthers McCall Pattern, Inc.,* 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990).

## FAILURE TO PROPERLY PROVIDE FOR TREATMENT OF SECURED CREDITOR'S CLAIM

9. The Disclosure Statement defines Secured Creditor as a Class 2 Creditor indicating it filed its claim for $830,797.00 yet the Proof of Claim was filed for $790,235.39 as Claim Number 7 on the Claims Register.

10. The Disclosure Statement at paragraph 37 and proposed plan attached thereto provides as following concerning Secured Creditor's Claim:

> 37. **Allowed Secured Claims of U.S. Bank (Class 2),Secured by the Real Estate New York** Allowed Class 2 Claims shall be paid on the Effective Date of the Plan in the order of their priority to the extent that the Sale of the Real Estate New York's proceeds is sufficient to satisfy those claims. To the extent a Class 2 claim is not satisfied, it will be treated as a Class 6 General Unsecured Claim.
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> This treatment of Class 2 Claims is subject to the "Stipulation and Order for Plan Treatment and Conditional Stay Relief on First Lien Secured by Real Property at 522 E 78th Street, #3C, New York, NY" dated November 22, 2016 (the

"Stipulation") a copy of which is annexed hereto as Exhibit "A" and incorporated herein by reference

11. Pursuant to the "Stipulation and Order for Plan Treatment and Conditional Stay Relief on First Lien Secured by Real Property at 522 E 78th Street, #3C, New York, NY" (hereinafter "Stipulation") which is incorporated into the Disclosure Statement and Plan and Debtor clearly references, the parties agreed that under no circumstance shall Secured Creditor accept a reduced payoff on its lien. As such, the Disclosure Statement and Plan as proposed is contradictory to the Stipulation and should be amended.

12. Furthermore, the language in the Disclosure Statement and Plan as it currently exists prevents Class 2 Creditor from being deemed unimpaired when per the disclosure statement "to the extent a Class 2 claim is not satisfied, it will be treated as a Class 6 General Unsecured Claim." Revising the Disclosure Statement and Plan to correspond with the payment in full provision of the Stipulation will eliminate this inconsistency.

13. In addition, paragraph 37 of the Disclosure Statement and the corresponding sections of the Plan, should clarify that notwithstanding any other provision contained in any plan to be confirmed or Confirmation Order that ensues, per the Stipulation the stay will lift as to Secured Creditor the earlier of December 31, 2016 or at confirmation and that once the stay is lifted, nothing shall impair Secured Creditor's right to enforce it's security agreement, including sale of the Property without further order of the court.

14. Finally, the Disclosure Statement and Plan define the effective date as the LATER of 20 days after entry of the confirmation order or such date that Debtor has the funds to pay the distributions. This is random and vague, but notwithstanding the Disclosure Statement and Plan should clarify that once Secured Creditor has stay relief they are not bound to wait for the Effective date to be paid in full but can proceed with its own sale of the property. Should

Secured Creditor voluntarily consent to allow for an auction after December 31, 2016, Secured Creditor remains entitled to payment in full of its lien.

15. In light of the foregoing deficiencies, the Disclosure statement is insufficient to establish "adequate information" as set forth in U.S.C. § 1125.

16. If the Debtor does not amend the Disclosure Statement to address the issues outlined above, all of which may assist creditors, including Secured Creditor, in making an informed judgment, the Disclosure Statement cannot be approved pursuant to section 1125 of the Bankruptcy Code and the entire plan process will remained stalled. *See Crowthers,* 120 B.R. 300. Without these necessary clarifications and additions, the Disclosure Statement is incomplete, potentially confusing and lacking adequate information by which creditors may make an informed decision regarding the proposed plan. *Id.*

**WHEREFORE,** for the reasons set forth herein, Secured Creditor respectfully requests that until the Debtor amends his Disclosure Statement, consistent with this Objection, the Court deny the approval of the Disclosure Statement, together with such other relief as this Court deems just and proper.

Dated: Buffalo, New York
December 1, 2016

FRENKEL, LAMBERT, WEISS, WEISMAN & GORDON, LLP

By: ______________________________
Michelle C. Marans, Esq.
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